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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,269	03/10/2004	Kenneth David Harris JR.	Brook 1023 (33964/1090)	2830
26812	7590	08/26/2005		EXAMINER
HAYES, SOLOWAY P.C. 175 CANAL STREET MANCHESTER, NH 03101			JAGAN, MIRELLYS	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/797,269	HARRIS ET AL.
	Examiner Mirells Jagan	Art Unit 2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 June 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3-6,9-11,13 and 18-20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,7,8,12 and 14-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 September 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6/15/05</u> .	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species 1 in the reply filed on 6/15/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The requirement is still deemed proper and is therefore made **FINAL**. Claims 3-6, 9-11, 13, and 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the main handle having the spring-loaded contacts, as claimed in claim 12, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 15 is objected to because of the following informalities:

In claim 15, there is lack of antecedent basis in the claim for "the dishwasher" in line 3. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 14, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,412,398 to Norcross et al [hereinafter Norcross].

Referring to claims 1 and 2, Norcross discloses an apparatus for determining food temperature, the apparatus comprising:

a fork (24) having a plurality of tines (100, 102);

a temperature sensor (thermocouple) integral with the fork;  
a main handle (106) connected to the fork (24);  
a handle portion (22) removably connected to the main handle (106); and  
a display (26) integral within the handle portion (22) and electronically connected to the temperature sensor;

wherein a temperature sensed by the temperature sensor is displayed by the display; and the main handle (106) has a first set of contacts (male electrical connectors) positioned to mate with a second set of contacts (female electrical connectors) in the handle portion (22) (see figures 1 and 2; column 4, lines 13-56; column 6, lines 55-63; column 7, lines 28-60; and column 7, line 67-column 8, line 7).

Referring to claims 14 and 15, Norcross discloses a method for cleaning an apparatus for determining food temperature, the apparatus comprising a piercing element, a temperature sensor integral with the piercing element, a main handle that is connected to the piercing element, a handle portion removably connected to the main handle, and a display integral within the handle portion and electronically connected to the temperature sensor, the method comprising:  
removing the main handle (22) from the handle portion (106);  
washing the main handle attached to the piercing element by washing in a dishwasher (which must be initiated in order to wash the main handle); and  
reattaching the main handle and the handle portion (see column 8, lines 48-64).

Referring to claim 17, Norcross discloses a system for determining food temperature, the system comprising:

a means (24) for sensing food temperature that is insertable into food items for sensing the temperature of the food;

a means (106) for holding the means for sensing food temperature;

a means (22) for displaying the temperature of the food; and

reattaching means for temporarily separating the means for displaying (22) from the means for sensing (24), thereby permitting washing of the means for sensing (24) without damaging the means for displaying (22).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Norcross in view of U.S. Patent Application Publication 2003/0097759 to Bond et al [hereinafter Bond].

Norcross discloses an apparatus having all of the limitations of claim 7, as stated above in paragraph 5, except for the material of the piercing element being stainless steel.

However, Bond discloses a fork (34A) having a removable handle for measuring the temperature of food, wherein the fork is made of is made of stainless steel, which Bond discloses

is a useful material for the fork since it is heat resistant and corrosion resistant material (see paragraph 42).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Norcross by making the piercing element (the fork) of stainless steel, as taught by Bond, in order to provide a piercing element that is resistant to heat and corrosion.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Norcross in view of U.S. Patent 3,742,602 to Brumwell.

Norcross discloses an apparatus having all of the limitations of claim 8, as stated above in paragraph 5, except for the material of the handle being aluminum.

Brumwell discloses a fork having a handle made of aluminum, which is a useful material since it is anodized in order to 'decorate' the handle by providing a color and a pattern on the surface of the handle (see column 1, lines 12-28, and column 2, lines 58-62).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Norcross by making the handle of aluminum, as taught by Brumwell, in order to provide a colored and patterned handle, thereby making the apparatus more aesthetically pleasing.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Norcross in view of U.S. Patent 5,066,242 to Martucci.

Norcross discloses an apparatus having all of the limitations of claim 12, as stated above in paragraph 5, except for the first set of contacts (male electrical connectors) in the main handle being spring-loaded. However, Norcross discloses that it is important to prevent water or moisture from entering the handle portion (22) since this will damage the electrical components therein (see column 4, lines 57-65, and column 7, line 63-column 8, line 4).

Martucci discloses an electrical connection technique having male and female contact portions for connecting together to provide electrical contact. The male portions are spring-loaded so that they seal the female contacts from the environment when the contacts are connected in order to protect the electrical connection from the environment, e.g., water (see figures 3 and 5; and column 2, lines 3-26).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Norcross by providing a spring-loaded first set of contacts (male) to mate with the second set of contacts, as taught by Martucci, in order to provide a seal in the second set (female) of contacts of the handle portion (22) when connecting them together to further protect the electrical components of the handle portion from water or moisture damage.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Norcross.

Norcross discloses a method having all of the limitations of claim 16, as stated above in paragraph 5, except for the step of drying the main handle portion.

However, Norcross discloses that the purpose of providing a detachable handle is to separate the handle and its electronics from the apparatus during washing in order to prevent

water from damaging the electronics in the handle (see column 4, lines 57-65, and column 7, line 63-column 8, line 4).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to dry the main handle and the handle portion of the apparatus after washing before the step of reattaching them together in order to ensure that any water or moisture present after washing does not seep into and damage the electronic parts of the handle, as suggested by Norcross.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents and publications disclose a temperature-sensing fork:

WO 99/37981 to Norcross

U.S. Design Patent D448,610 to Saunders et al

U.S. Patent Application Publication 2002/0009121 to Siu

U.S. Patent 6,539,842 to Chapman et al

U.S. Patent Application Publication 2004/0123469 to Wilkinson, Jr. et al

U.S. Patent Application Publication 2002/0124737 to Bedetti et al

U.S. Patent 3,552,210 to Wright, Jr.

The following patents disclose a fork with detachable handle:

U.S. Patent 5,699,614 to Garneau, Sr.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 11AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ  
August 19, 2005



Mirellys Jagan  
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